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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
Item 37 ID#4510
RESOLUTION E-3919
June 30, 2005

R E S O L U T I O N

Resolution E-3919. San Diego Gas & Electric Company (SDG&E) requests clarification that its Net Energy Metering Tariff for Biogas Customer-Generators applies to non-residential customers only. SDG&E's request to exclude residential load is denied.

By Advice Letter 1599-E filed on July 15, 2004.

SUMMARY

This Resolution rejects SDG&E's proposal to limit the aggregation of electric load under Schedule NEM-BIO to non-residential service accounts only.

BACKGROUND

Assembly Bill 2228 directs the state's electric utilities to establish a net energy metering pilot program for eligible biogas customer-generators. SDG&E seeks to modify the tariff implementing the pilot program to reflect the utility's position that the aggregation component of the net-metering program applies to non-residential bundled service customers only.

On September 24, 2002, Governor Davis signed Assembly Bill (AB) 2228 into law directing the state's electric utilities to establish a net energy metering pilot program for eligible biogas customer-generators.¹ Under the pilot program, certain electric utility customers are allowed to interconnect a biogas generating facility and operate in parallel with a utility's system to serve all or a portion of the customer's load. The legislature passed AB 2228 in part to further diversify the state's energy mix and to help mitigate the environmental impacts of manure stemming from farming operations.

¹ AB 2228 is codified in Public Utilities Code Section 2827.9.

The value of the energy produced by the biogas facility and fed back to the utility system is netted against the value of energy delivered to the customer-generator by the utility over a 12-month period based on time-of-use period. In the event the customer-generator is a net consumer of energy, the value of energy produced by the customer-generator is credited against that customer's total electric utility bill. However, if the generator-customer is a net producer of energy at the end of a 12-month billing cycle, that customer is not owed any compensation by the utility for the excess energy that is produced. For purposes of determining whether the customer-generator is a net producer or net consumer, the bill specifically authorizes dairy operators to aggregate their electric load.²

In Advice Letter 1599-E, SDG&E seeks to modify Schedule NEM-BIO (the tariff implementing the pilot program) to reflect the utility's position that the aggregation component of the net-metering program applies to non-residential bundled service customers on dairy farms only. SDG&E does propose to "grandfather" in aggregated residential load with an effective cutoff date of August 24, 2003 (i.e., applications for participation in the pilot program received on or after this date would not be authorized to aggregate residential load).

The Energy Division approved SDG&E's Schedule NEM-BIO on September 19, 2003 in Resolution E-3827. For a more detailed description of the operation of the pilot program, readers are encouraged to review that resolution.

NOTICE

Notice of AL 1599-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

² This load aggregation provision does not extend to other utility customers who might elect to install a biogas generating facility.

PROTESTS

SDG&E's AL 1599-E was timely protested by Sustainable Conservation and by RCM Digesters, Inc., on August 2, 2004. SDG&E responded to these two protests on August 9, 2004.

The following summarizes the major issues raised in the protests.

Sustainable Conservation:

Sustainable Conservation disagrees with SDG&E's position that residential accounts should not be aggregated under Schedule NEM-BIO. Sustainable Conservation argues that AB 2228 includes residential accounts to the extent such residences are part of the dairy operation:

“We believe that AB 2228 does include residential time of use meters if the residences are part of the ‘dairy operation,’ which means they are located on the dairy, provide housing for people who work on the dairy, and share the same ownership.” [p.1]

Sustainable Conservation points out that SDG&E erroneously cites AB 2228 in justifying its claim that AB 2228 excludes residential loads. According to Sustainable Conservation, AB 2228 merely provides a list of examples of the types of loads that can be aggregated as opposed to providing a finite and exhaustive list.

RCM Digesters, Incorporated:

RCM Digesters, Inc. also disagrees with SDG&E's restrictive interpretation of AB 2228. Similar to Sustainable Conservation, RCM Digesters argues that SDG&E erroneously refers to AB 2228 in describing the list of loads that can be aggregated. RCM Digesters states: “It is clear that the intent of the code is to provide some examples of the types of load that should be aggregated, but not to limit itself to those examples.” [p.1] RCM Digesters argues that although residential accounts are not explicitly referenced in the bill, they should be viewed as eligible for aggregation because residences located on dairy property are an integral part of dairy operations.

SDG&E:

In its response to the two protests, SDG&E upholds its position and argues that the protests should be denied for two reasons. First, Public Utilities (PU) Code

Section 2827.9 does not “define an eligible biogas digester customer-generator as applying to a ‘residential’ customer.” Second, residential customers are served on different rates and time-of-use periods than those applicable to dairy operations and, therefore, should not be treated as if they are the same.

DISCUSSION

The central question at issue concerns the extent of load aggregation that can occur on dairy farms under the pilot program established by AB 2228. Energy Division believes it is not the intent of AB 2228 to exclude residential load.

Energy Division reviewed AL 1599-E, the protests of Sustainable Conservation and RCM Digesters, Inc., as well as SDG&E’s response to protests.

What is the extent of load aggregation that can occur on dairy farms under the legislatively-mandated pilot program? The relevant text from PU Code Section 2827.9(e)(1) provides:

“For purposes of determining if the biogas digester customer-generator was a net consumer or a net producer of electricity during that period, the electrical corporation shall aggregate the electrical load of a dairy operation under the same ownership, including, but not limited to, the electrical load attributable to milking operations, milk refrigeration, and water pumping located on property adjacent or continuous to the dairy. Each aggregated account shall be billed and measured according to a time of use rate schedule.”

Based on the inclusion of the phrase “...including, but not limited to...” in this subsection of the Code, it is evident, that the list of the types of load eligible for aggregation is not complete; rather, the list is illustrative. If the Legislature contemplated narrow restrictions pertaining to the types of load on a dairy farm that can be aggregated it could easily have reflected such restrictions by adding language to that effect. Such intent is not evident in AB 2228.

As an additional matter, we find it reasonable to include residential load as part of the customer-generator’s load aggregation to the extent such load meets the two conditions specified in PU Code Section 2827.9(e)(1):

- (i) Is under the same ownership as the dairy; and

- (ii) Is billed according to a time of use tariff.

By maximizing the amount of generation credits that can be netted against aggregated load, the customer-generator will be able to maximize the utility and value of energy produced by the net-metered biogas digester facilities. The economic value that accrues to the customer-generator will in turn enhance the pilot-program's ability to satisfy the numerous objectives of AB 2228 which are to: (1) promote resource diversity in the state; (2) mitigate the adverse environmental effects of manure on farms; (3) reduce the costs of energy demand; and (4) reduce peak electricity demand.

If dairy farm customer-generators are denied the opportunity to aggregate residential load, such customer-generators will be forced to credit excess generation to the utility (at zero economic value to the customer) as opposed to applying the value of the excess energy against the generation charges incurred by other onsite load. This situation does not promote economic efficiency in the context of net-metered generation.

Based on the foregoing reasons, SDG&E's AL 1599-E seeking to exclude residential account load aggregation as part of the biogas digester pilot program should be denied.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on April 18, 2005, with comments due on May 13, 2005 and reply comments due on May 20, 2005.

SDG&E submitted comments on May 13, 2005. Reply comments were submitted by RCM Digesters, Inc. on May 25, 2005. In its comment letter, RCM Digesters requests that the reply comment period be extended in light of a staffing change at the company which affected its ability to prepare a timely reply. Given the

circumstances explaining RCM Digesters' late submittal, we shall accept the company's late comments.

SDG&E's Comments

SDG&E's comments do not dispute the policy direction of the draft resolution, but rather focus on several specific clarifications which, in the company's view, are necessary to implement the draft resolution's finding that residential load shall not be excluded from the load aggregation component of the pilot program. First, SDG&E notes that the aggregated load must be located on property adjacent or continuous to the dairy. Additionally, SDG&E states that the aggregated load must also be part of the dairy operation. According to the utility, both of these conditions are enunciated in PU Code Section 2827.9 (e)(1). Lastly, SDG&E comments that the draft resolution should explicitly state that qualifying biogas generators must be installed behind a non-residential time of use meter and not behind a residential time of use meter. This comment stems from SDG&E's concern about the prospect of "unintended gaming" where a generator customer could receive a much larger generation rate credit while on a residential time of use tariff as compared to the generate rate credit that the customer would receive on a non-residential time of use tariff.

RCM Digseter, Inc.'s Reply Comments

RCM Digesters supports the draft resolution's conclusion and urges the Commission to adopt the draft resolution. In reference to SDG&E's May 13, 2005 comments, RCM Digesters states:

"Restriction of net-metering to non-residential accounts is counter to the intension of the Legislature's drafting of AB 2228 because the restriction could discourage the construction of livestock air emission controls (anaerobic digesters)."

Discussion of Comments

With respect to SDG&E's comments, we agree that any aggregated load under the pilot program, including residential load, must be located on property adjacent or continuous to the dairy. This is clearly a condition of the load aggregation provision of AB 2228.

With respect to SDG&E's assertion that the aggregated load must also be a part of the dairy operation, we acknowledge that PU Code Section 2827.9(e)(1) contains language stating that the electric utility "shall aggregate the electrical load of a dairy operation." In this resolution, we will not attempt to establish a

definition or set of criteria to distinguish residential load that is part of a dairy operation from residential load that is not part of a dairy operation. Instead, in this resolution we find that AB 2228 does not exclude residential load from load aggregation and we find it reasonable to include residential load to the extent such load meets the following conditions: (i) is under the same ownership as the dairy; (ii) is billed according to a time of use tariff; and (iii) is located on property adjacent or continuous to the dairy.

Lastly, on the issue of whether the biogas digester facility must be installed behind a non-residential time of use meter, we provisionally agree with SDG&E on this point within the limited context of the use of such facilities on dairy farms during the term of the pilot program. A broader ruling regarding the merit of adding restrictions on the placement of net energy metered biogas digester facilities in general is beyond the scope of this resolution. If SDG&E wishes to have this issue more fully addressed it should either file a separate advice letter or seek to have the issue addressed in an appropriate forum if and when the pilot program is considered for full program implementation. In the event SDG&E decides to file a separate advice letter, the advice letter should be served on all parties to the Commission's distributed generation rulemaking (R.04-03-017) and Renewable Portfolio Standard rulemaking (R.04-04-026).

FINDINGS

1. SDG&E filed AL 1599-E on July 15, 2004 seeking clarification that its Net Energy Metering Tariff for Biogas Customer-Generators applies to non-residential customers only.
2. Timely protests were filed by Sustainable Conservation and RCM Digesters, Inc., and a reply to protests was filed by SDG&E on August 9, 2004.
3. An intent by the Legislature to exclude aggregation of residential load on dairy farms as part of the net-metering pilot program is not evident in AB 2228 or in PU Code 2827.9.
4. Allowing dairy farms to aggregate residential onsite load enhances the economic value of installing biogas digester facilities and contributes towards the achievement of the policy objectives enumerated by the Legislature in AB 2228.
5. Timely comments were submitted by SDG&E.
6. The late reply comments submitted by RCM Digesters, Inc. should be given full consideration due to the circumstances explaining the late submittal.

7. Aggregated residential load under the pilot program must meet the following three conditions: (i) is under the same ownership as the dairy; (ii) is billed according to a time of use tariff; and (iii) is located on property adjacent or continuous to the dairy.
8. Biogas digester generating facilities under the pilot program used on dairy farms shall be installed behind a non-residential time of use meter.
9. A broader ruling regarding the merit of adding restrictions on the placement of net energy metered biogas digester facilities in general is beyond the scope of this resolution.

THEREFORE IT IS ORDERED THAT:

1. The request of SDG&E to exclude residential load as requested in Advice Letter AL 1599-E is denied.
2. Biogas digester generating facilities under the pilot program and used on dairy farms shall be installed behind a non-residential time of use meter.
3. SDG&E shall file a compliance advice letter within 10 days of the effective date of this resolution reflecting the findings and clarifications provided herein.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 30, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director